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By: Louisa Drain Date: June 27, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:
Robert L. Leon.

Conf. No.: 5068

: Group Art Unit: 3634

Appln. No.: 10/757,956

: Examiner: Hugh B. Thompson

Filing Date: January 15, 2004

: Attorney Docket No.: 681578-1US
(formerly 10369-4US)

Title: APPARATUS FOR EXTERIOR EVACUATION FROM BUILDINGS

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

The following Comments on Statement of Reasons for Allowance is submitted in response to a Notice of Allowance and Fee(s) Due, dated June 1, 2005. Applicant respectfully objects to the Examiner's Statement of Reasons for Allowance on page 4 of the Notice of Allowance.

37 C.F.R. § 1.104(e) and MPEP § 1302.14 permit an Examiner to set forth a written Statement of Reasons for Allowance under certain circumstances. However, certain requirements for the Statement of Reasons for Allowance are expressly set forth in MPEP § 1302.14, including the requirement that "[w]here specific reasons are recorded by the Examiner, care must be taken to ensure that Statements of Reasons for Allowance (or indication of allowable subject matter) are accurate, precise, and do not place unwarranted interpretations, whether broad or narrow, upon the claims."

The Examiner's Statement of Reasons for Allowance on page 4 of the Notice of Allowance are objected to at least on the ground that they fail to comply with the aforesaid

requirement of MPEP § 1302.14 because the Reasons for Allowance are not wholly accurate or precise and may place an unnecessarily narrow interpretation on the claims. Except as noted below, the Applicant denies acquiescence to the Reasons for Allowance and further denies being bound by any negative inferences that may flow therefrom in any future proceeding regarding this application or any patent(s) issuing directly or indirectly therefrom.

The Examiner's statement of reasons for allowance initially states that "the primary reason for the allowance of claims 1 and 37-44 in the inclusion of an energy dissipating mechanism/means that 'enables the person to attain automatically within his descent, a descent speed of less than four feet per second'...". The applicant does not dispute and in fact acquiesces to the above quoted portion of the Examiner's statement as the basis for allowance.

The Examiner's statement of the reasons for allowance goes on to say "the mechanism/means disclosed as comprising an air resistance fan with a plurality of vanes, or a generator and resistance, or a stator and a rotor with a gap therebetween, wherein the size of the gap between the stator and the rotor is adjustable prior to the descent." The Applicant objects to the second quoted portion of the Examiners statement to the extent that the three "disclosed" mechanisms referred to by the Examiner might potentially be read as a limitation upon the independent claims (1 and 37-44). It is clear that none of the three mechanisms referred to by the Examiner as "disclosed" specifically appears in any of the independent claims. In fact the air resistance fan mechanism is specifically claimed in dependent claim 8, the generator and resistance mechanism is specifically claimed in dependent claim 10 and the stator and rotor mechanism is specifically claimed in dependent claim 12. At the very least, the Doctrine of Claim Differentiation precludes reading any of the three mechanisms claimed in separate dependent claims as limitations upon independent claim 1. Further, no prior art was cited during the prosecution of the application as a basis for rejecting any of the independent claims. As a result, no amendments were made to any of the independent claims and no arguments were presented to overcome any prior art rejection. Accordingly, the inclusion of any of the three mechanisms stated by the Examiner as "disclosed" is not necessitated by any prior art or any action taken by the Applicant to overcome any prior art.

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In view of the foregoing it is respectfully submitted that the independent claims (1 and 37-44) should be given their broadest interpretation under the prevailing law and should not be restricted to the inclusion of any of the three mechanisms referred to by the Examiner as being "disclosed".

The Applicant respectfully requests that these comments be made of record in the application and the patent file.

Respectfully submitted,

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June 27, 2005 By: Leslie L. Kastan, Jr.
(Date)

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